

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In Re: Oil Spill by the Oil Rig	*	MDL No. 2179
“Deepwater Horizon” in the Gulf	*	
of Mexico, on April 20, 2010	*	SECTION: J
	*	
	*	JUDGE BARBIER
	*	
This Document Relates to:	*	MAG. JUDGE WILKINSON
<i>All Claims In Pleading Bundle B3</i>	*	

**STIPULATION AND AGREED ORDER
REGARDING THE COURT’S APRIL 16, 2019 ORDER ON BP’S MOTION FOR
PERMISSION TO DISPOSE OF CERTAIN MATERIALS**

WHEREAS, on December 12, 2018, BP Exploration & Production, Inc., BP America Production Company, and BP America Inc. (collectively, “BP”) moved the Court for an order granting it permission to dispose of approximately 140,000 samples identified in Exhibit A to its motion (the “Subject Samples”), which BP had collected and was preserving in compliance with applicable court orders. (Rec. Doc. 25226, hereinafter the “Disposal Motion”);

WHEREAS, objections were filed to the Disposal Motion by Nexsen Pruet, LLC, Douglas M. Schmidt, APLC, The Downs Law Group, P.A., Koerner Law Firm, Falcon Law Firm, Lindsay & Lindsay, P.A., Stag Liuzza, L.L.C. (formerly Smith Stag L.L.C.), and Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A. (the “Objecting Plaintiffs”);

WHEREAS, after extensive briefing on the Disposal Motion, the Court entered an order on April 16, 2019, granting the Disposal Motion, consistent with Pretrial Order 62, and directing as follows:

Within 35 days of this Order, plaintiffs that have objected to BP’s Motion may take custody of any samples BP seeks to dispose that plaintiffs wish to preserve, with shipping and storage of such requested samples to be at the objecting plaintiffs’ expense;

If within 35 days of this Order, plaintiffs do not elect to take custody of the samples as provided above, BP may dispose of the samples identified in its Motion at Exhibit A.

(Rec. Doc. 25593, the “April 16 Order”);

WHEREAS, pursuant to the Court’s April 16 Order, the deadline for Objecting Plaintiffs to take custody, at their own expense, of any Subject Samples they wish to maintain is presently May 21, 2019;

WHEREAS, over the past several months, counsel for certain Objecting Plaintiffs and counsel for BP have engaged in extensive discussions regarding the Disposal Motion and the Court’s April 16 Order;

WHEREAS, at the request of Objecting Plaintiffs’ counsel, counsel for BP arranged for a site visit of BP’s sample storage facility and invited interested parties and their experts to attend;

WHEREAS, plaintiffs in the above-captioned litigation represented by the Downs Law Group, P.A. (the “Downs Group Plaintiffs”) have indicated they would like to take custody of certain Subject Samples and store them, at their own expense, in compliance with the Court’s April 16 Order;

WHEREAS, the Downs Group Plaintiffs have indicated they will not be able to take custody of certain Subject Samples by the May 21, 2019 deadline due to logistical challenges, including the need to procure appropriate freezer truck transport, freezer storage facilities, and related equipment and personnel required to transfer the samples;

WHEREAS, no other Objecting Plaintiff has expressed interest in taking possession of any of the Subject Samples, pursuant to PTO 62 and the April 16 Order;

WHEREAS, on May 15, 2019, the Downs Group Plaintiffs filed a Notice of Appeal of the April 16 Order (Rec. Doc. 25617);

WHEREAS, on May 15, 2019, the Downs Group Plaintiffs also filed an Emergency Motion For Stay Pending Appeal Of The Order of April 16, 2019 Or, Alternatively For 45 Days (Rec. Doc. 25619, the “Stay Motion”), seeking a stay of the April 16 Order either through resolution of their appeal, or for a period of 45 days;

WHEREAS, the Downs Group Plaintiffs indicated in the Stay Motion that if the Court granted the 45-day stay, “then Plaintiffs will dismiss their appeal, as that would render it moot”;

WHEREAS, counsel for the Downs Group Plaintiffs and counsel for BP have met and conferred regarding the Downs Group Plaintiffs’ Notice of Appeal, Stay Motion, and logistical issues associated with them taking custody of certain Subject Samples;

NOW, THEREFORE, the Downs Group Plaintiffs and BP, by and through their undersigned counsel, hereby stipulate and agree, and being duly advised, the Court hereby Orders that:

1. The May 21, 2019 deadline established in the April 16 Order for plaintiffs to take possession of any Subject Samples they wish to maintain is hereby extended through and including close of business on July 5, 2019, as outlined below.

2. By **May 28, 2019**, the Downs Group Plaintiffs will file with the Court a list of the Subject Samples that they wish to take possession of and a list of the Subject Samples that they do not wish to take possession of.

3. By **July 5, 2019**, the Downs Group Plaintiffs will take possession of the Subject Samples identified on their May 28, 2019 filing, with shipping and storage of such requested samples to be at the Downs Group Plaintiffs’ expense.

4. BP agrees that it will continue to preserve, and will not to dispose of, any Subject Samples before **July 5, 2019**. After July 5, 2019, BP may dispose of those Subject Samples

identified in its Motion at Exhibit A that the Downs Group Plaintiffs have not taken possession of without any further notice or action required by BP or the Court before such disposal. BP agrees that it will work in good faith with the Downs Group Plaintiffs throughout the transfer of custody to facilitate and expedite the transfer. If BP's representatives identify any concerns about the procedures employed during the transfer of custody with regard to preserving the integrity of the Subject Samples, they will work in good faith with the Downs Group Plaintiffs to address those concerns.

5. BP further agrees not to seek costs from the Downs Group Plaintiffs for storing the Subject Samples for an additional 45 days past the original May 21, 2019 disposal deadline.

6. The Downs Group Plaintiffs will not object to BP's disposal of those Subject Samples that the Downs Group Plaintiffs do not identify as ones they wish to take possession of, consistent with PTO 62 and the April 16 Order.

7. The Downs Group Plaintiffs will dismiss their appeal of the April 16 Order with prejudice within five days of entry of this Order.

8. Nothing in this Stipulation and Agreed Order shall affect BP's obligation to preserve any samples or evidence in BP's possession, custody, or control other than the Subject Samples, consistent with applicable laws, orders of the Court, and any future orders of the Court subject to the plaintiff's right to object to said future orders.

Respectfully submitted,

/s/ Craig T. Downs

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Attorneys for BP

SO ORDERED.

New Orleans, Louisiana this 21st day of May, 2019.


United States District Judge